

A33827 PCT USA-062635.0132  
PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Paul Phillip Van Saarloos  
Serial No. : 09/719,726  
Filed : December 15, 2000  
For : Z AXIS TRACKER

STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF  
NONSIGNING INVENTOR (37 C.F.R. §1.47 (b))

This statement is made as to the facts that are relied upon to establish the diligent effort made to secure the execution of the Declaration by the nonsigning inventor for the above-identified patent application.

Because signing on behalf of the nonsigning inventor is by a person or entity showing a sufficient proprietary interest, this statement also recited facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage.

I, Ian Jeffrey Constable, a citizen of Australia, residing at 134 Glyde Street, Mosman Park, Western Australia, 6012, Australia state:

1. I am the Director of The Lions Eye Institute of Western Australia Incorporated (hereinafter "The Lions Eye Institute"), whose address is 2 Verdun Street, Nedlands, Western Australia 6009.
2. Upon information and belief, on June 17, 1999, The Lions Eye Institute filed International application No. PCT/AU99/00479 for "Z Axis Tracker," naming Paul

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Phillip Van Saarloos (hereinafter "Dr. Van Saarloos") as the sole inventor and claiming priority of Australian application No. PP4202 filed June 17, 1998.

3. Upon information and belief, a national stage application based upon International application PCT/AU/99/00479 was filed in the United States on December 15, 2000, and was assigned Serial No. 09/719,726 (hereinafter the "U. S. '726 application").

4. Appended hereto as Exhibit 1 is a copy of a letter dated December 1, 2000, that Jeanette Butler, Manager, Finance and Administration of The Lions Eye Institute (hereinafter Ms. Butler) sent to Dr. Van Saarloos enclosing, among other documents, a Combined Declaration and Power of Attorney for the U.S. '726 application. Dr. Van Saarloos did not respond to that letter.

5. Appended hereto as Exhibit 2 is a copy of a letter dated December 20, 2000 that Ms. Butler sent to Dr. Van Saarloos' attorneys, Corrs Chambers Westgarth, enclosing a copy of Dr. Van Saarloos' Service Contract with The Lions Eye Institute (copy appended as Exhibit 2 to the Statement Establishing Proprietary Interest by Person Signing on Behalf of Nonsigning Inventor filed concurrently herewith) and requesting that Dr. Van Saarloos complete the Declaration for the U.S. '726 application.

6. Appended hereto as Exhibit 3 is a copy of the pertinent page of a letter dated April 6, 2001, that Ms. Butler sent to the attorneys for The Lions Eye Institute, Clayton Utz, requesting their assistance in obtaining the execution by Dr. Van Saarloos of, among other documents, the Declaration for the U.S. '726 application. This letter also sets out a chronology of the efforts that had previously been made to obtain Dr. Van Saarloos' cooperation, and the fact that he had not responded.

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7. Appended hereto as Exhibit 4 is a copy of the pertinent page of a letter dated April 24, 2001, from The Lion Eye Institute's attorneys, Clayton Utz, to Dr. Van Saarloos' attorneys, Carr Chambers Wentgarth, again requesting execution, on an urgent basis, of the application documents for the U.S. '726 application and including additional copies of such documents.

8. Appended hereto as Exhibit 5 is a copy of a letter dated May 1, 2001, from Dr. Van Saarloos' attorneys to The Lions Eye Institute's attorneys advising that they have been "unable to obtain instructions [from Dr. Van Saarloos] on the intellectual property matter raised in your letter until he returns."

9. Appended hereto as Exhibit 6 is a copy of a letter dated June 5, 2001, from The Lions Eye Institute's attorneys to Dr. Van Saarloos' attorneys again requesting the prompt execution of the documents previously forwarded with respect to the U. S. '726 application.

10. Subsequent to the date of Exhibit 6, discussions were held with Dr. Van Saarloos through counsel and, upon information and belief, pursuant thereto Dr. Van Saarloos had agreed to execute the Declaration for the U.S. '726 application. Ms. Butler requested The Lions Eye Institute's patent attorneys to prepare fresh documents for execution. Appended hereto as Exhibit 7 is a copy of a letter dated July 11, 2001 to Ms. Butler from The Lions Eye Institute's patent attorneys forwarding the new documents, including a Combined Declaration and Power of Attorney and an Assignment for the U.S. '726 application.

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11. The Lions Eye Institute's attorneys forwarded the Combined Declaration and Power of Attorney and the Assignment to Dr. Van Saarloos' attorneys, on July 16, 2001, but to date he has not returned the executed documents.

12. Upon information and belief, the final unextendable deadline for filing the Declaration in the U. S. '726 application is July 29, 2001. The execution and filing of the Declaration by The Lions Eye Institute, therefore, is necessary to preserve the rights of the parties and to prevent irreparable harm which would result from the loss of priority rights to International application No. PCT/AU99/00479 and Australian application No. PP4202.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 27/7/01

*Jan Jeffrey Constable*  
Jan Jeffrey Constable